



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH J. BERKE et al.

Application No. 09/207,634

Appeal No. _____

#20
Appeal Brief
10-25-02
SW

SECOND AMENDED BRIEF OF APPELLANTS

Commissioner for Patents
Washington, D.C. 20231

RECEIVED

OCT 10 2002

GROUP 3600

Sir:

This is an appeal under 35 U.S.C. §134 of the Examiner's final rejection of claims 5-10, 12-14 and 20-28. Apparatus claims 1-4 and method claims 15-19 were canceled without prejudice under a restriction requirement, as drawn to other classes. Claim 11 was allowed. The Brief is filed in triplicate. The requisite fee set forth in § 1.17(f) has been previously paid.

Section 9 (GROUPING OF CLAIMS) in this Appeal Brief is amended in accordance with 37 C.F.R. 1.192(c) to clarify that each group of the rejected claims stand or fall together. Section 4 (STATUS OF CLAIMS) is amended to indicate the current status of claims 9, 12, 14 and 23 following the Examiner's second final rejection.

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(1)

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(2)

REAL PARTY IN INTEREST

The parties identified in the caption of the Brief are the real parties in interest pursuant to 37 CFR § 1.192(c)(1).

(3)

RELATED APPEALS AND INTERFERENCES

This application has been assigned. There are no appeals or interferences, pursuant to 37 CFR § 1.192(c)(2) which are known to Appellants, the Appellants' legal representative, or assignee which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(4)

STATUS OF CLAIMS

There were two final rejections. In the first final rejection, claims 5-7, 10, 12, 20, 24, 25, 27 and 28 were rejected under 35 U.S.C. 102(b) as being anticipated by Mascio (Italian Patent 574,172); claims 8 and 14 were rejected under 35 U.S.C. 103(a) as being unpatentable over Mascio ('172) in view of Perez ('889); claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson ('434) and Harmon et al. ('041) as applied to claim 5, and further in view of Hsieh et al. ('037); and claims 21-23 and 26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Anderson ('434) and Harmon et al. ('041) as applied to claim 5, and further in view of White ('950).

The Examiner withdrew the final rejection and issued a second final rejection supported by other references after Applicants forwarded a translation of Mascio which showed that Mascio did not apply to the claimed inventions. Claims 5-8, 10, 20, 21, and 24-28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj U.S. Patent No. 5,697,624 in view of White U.S. Patent No. 5,621,950. Claims 5-8, 10, 13 and 20-28 were further rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of Brown U.S. Patent No. 5,301,393. Claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Arias et al. U.S. Patent No. 4,261,447. Claim 9 was further rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Arias et al ('447). Claim 12 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Smith U.S. Patent No. 4,044,784. Claim 12 was further rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Smith ('784). Claim 14 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith ('784). Claim 14 was further rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith ('784). Claim 11 was allowed. Copies of Mascio (Italy) which was the prime reference in the first final rejection and the translation are in the Appendix. The second final rejection of claims 5-10, 12-14, and 20-28 is the subject of this appeal.

(5)

THE EXAMINER'S REFERENCES

The references of record which were relied on by the Examiner as evidence of obviousness are:

	<u>U.S. Patents</u>	
Hsieh, et al.	5,951,037	09/1999
Faraj	5,697,624	12/1997
White	5,621,950	04/1997
Brown	5,301,393	04/1994
Perez	4,989,889	02/1991
Anderson	4,448,434	05/1984
Arias et al.	4,261,447	04/1981
Smith	4,044,784	08/1977
Harmon	524,041	08/1894

(6)

STATUS OF AMENDMENTS

No amendments have been filed subsequent to the most recent final rejection.

(7)

SUMMARY OF THE INVENTION

This invention relates to carriers and more particularly to a wheeled cart 51 with

a removable carrier 50 for closing and transporting closed bags or sacks, filled with loose or granular materials, such as salt, sand, trash, fertilizer and cement (page 7, lines 17-24).

The carrier 50 and cart 51 are depicted in Figures 7 through 18 of the drawings. The object of the invention is to replace the current practices of cradling, gripping and resting large bags on shoulders which are often open and cause spillage, soiled clothes and/or physical injuries. This condition is particularly serious with women and elderly persons who constitute an increasing portion of the population. Heavy bags and sacks need only to be elevated by a small amount to transport them with the invention. Open bags are closed and clamped in a pair of jaws 55, 61 with eye bolts 62 and thumb screws 63.

The cart 51 is a 2-wheel cart (Figures 10-12) having a foldable lower shelf 54 (Figures 11-12) and its height is adjustable such that different bags can be placed on the shelf 54 and gripped by the carrier 50 (page 7, lines 22-24). The carrier 50 has a pair of elongated pivotally connected jaws 55, 61 and a handle formed in one of the jaws 55. At least one of the elongated jaws 55, 61 has a plurality of small pointed tabs 33 which protrude for gripping bags (Figures 7-8). An important feature is that the carrier 50 can be detached and used separately. The manner of using the carrier 50 and cart 51 is shown in Figures 16 and 18. The foldable design facilitates storage and transportation of the carrier 50 and cart 51.

(8)

ISSUES (37 C.F.R. 1.192(c)(4))

Issue: Whether the claims on appeal are obvious in view of the references under 35 U.S.C. 103(a).

Applicant says NO

(9)

GROUPING OF CLAIMS (37 C.F.R. 1.192(c)(5))

Group I - Claims 5-9, 12, 24 and 27.

Group II - Claim 13

Group III - Claims 10, 14, 25 and 28.

Group IV - Claims 20, 21, 22, 23, 26

The claims of each of the above groups stand or fall together.

(10)

ARGUMENT 1.192(c)(6)

Claims 5-8 and 24-28 were rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of White ('950) and alternatively over Faraj ('624) in view of Brown ('393). Claim 9 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of White ('950) and further in view of Arias et al ('447) and alternatively over Faraj ('624) in view of Brown ('393) and further in view of Arias et al. ('447). Claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of White ('950) and alternatively over Faraj ('624) in view of Brown ('393). Claim 13 was rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of Brown ('393).

It is evident from the references that the Examiner failed to view the claimed

inventions as a whole, employed impermissible hindsight vision and should be reversed for the following reasons. (Graham v. John Deere, 383 U.S. 1, 148 USPQ 459 (1966); M.P.E.P. § 2.141). None of the cited references disclose carts for transporting closed bags or sacks.

Faraj ('624), the principal reference, discloses a shopping cart 10 which resembles a walking cane. The cart is comprised of a single support member 12, a single wheel 20, a curved handle 24 similar to an umbrella or cane, U-shaped or J-shaped hooks 26 for hanging bags attached to an intermediate portion of the support member 12 and a hinged bracket 30 for supporting a container such as a carton of soft drinks.

Brown ('393), a secondary reference, discloses a small spring biased clip for combining sheets of paper and sealing bags (Fig. 12; col. 3, lines 56-57).

Arias et al. ('447), a secondary reference, discloses a 2-wheel cart with a U-shaped base 54 for transporting luggage.

Smith ('784), a secondary reference, discloses a walking aid cane with a telescoping support member.

White ('950), a secondary reference, discloses a small clip with protusions 38 for holding sheets of paper together (col. 1, lines 10-20 and col. 1, lines 50-56).

Perez ('889) discloses a 2-wheel foldable shopping cart with a lower portion of a bag 6 attached to a base 5 and an upper portion of the bag 6 attached to a frame 1.

Hsieh ('037) discloses a 2-wheel foldable cart for transporting luggage.

Harmon et al. ('041) discloses a 2-wheel bag holder for transporting open bags.

Anderson ('434) discloses a foldable 2-wheel hand truck for transporting open bags.

Neither Faraj ('624), Arias et al. ('447), Brown ('393) or White ('950) suggest or provide motivation for combining the clips of Brown ('393) or White ('950) with the shopping cart of Faraj ('624) or Arias et al. ('447). Faraj ('624) teaches away from this modification by providing hooks for carrying bags. Faraj's ('624) main object is to provide a compact cart that is easy to store (col. 1, lines 35-37). Nor do Brown ('393) or White ('950) suggest or provide an incentive or motivation for adding a wheeled cart such as Faraj ('624) or Arias et al. ('447). Nor do Faraj ('624) or Arias et al. ('447) suggest or provide motivation or for the addition of the telescopic feature of Smith ('784). Nor do Faraj ('624) or Arias et al. ('447) suggest or provide motivation for the addition of a detachable carrier. Nor do any of the references suggest or provide motivation for replacing the curved handle of Faraj ('624) with the clip of White ('950) or Brown ('393). Perez ('889) and Harmon et al ('041), the two references which disclose bag carrying carts, teach away from a carrier for transporting closed bags.

The Group I claims 5-9, 12, 24 and 27 are drawn to the combination of a cart and carrier and are patentably distinguishable from the applied references by the positive limitations of the carrier having a pair of jaws for clamping an upper portion of a closed bag or sack and a handle attached to one of the jaws.

The Group II claim 13 which depends from claim 5 is patentably distinguishable from the applied references by the same positive limitations as the Group I claims and additional limitation of a pair of bolts and thumb nuts for clamping the jaws.

The Group III claims 10, 14 and 28 which are drawn to the combination of a cart and a carrier are patentably distinguishable from the applied references by the positive

limitations of a detachable carrier having a pair of jaws for clamping an upper portion of a closed bag or sack.

The Group IV claim 20 which is drawn to the combination of a cart and a carrier is patentably distinguishable from the applied references by the positive limitations of a cart with a releasable carrier having a pair of jaws with gripping surfaces for clamping an upper portion of a closed bag or sack.

Claim 20, which depends from claim 5, covers the broad concept of a jaw with a gripping surface. Claims 22, 23 and 26 place limits on the gripping surface.

In Interconnect Planning Corporation v. Feil, et al. 774 F.2d 1132, 227 USPQ 543 the Federal Circuit said: "Not only must the claimed invention as a whole be evaluated, but so also must the references as a whole, so that their teachings are applied in the context of their significance to a technician at the time--a technician without our knowledge of the solution."

In In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed.Cir.19), the Federal Circuit said: "The mere fact that the prior art could be so modified would not have made the modification obvious unless the prior art suggested the desirability of the modification. See Carl Schenck, A.G. v. Nortron Corp., 713 F.2d 782, 787, 218 USPQ 698, 702 (Fed.Cir.1983), and In re Sernaker, 702 F.2d 989, 995-96, 217 USPQ 1, 6-7 (Fed.Cir.1983), both citing In re Imperato 486 F.2d 585, 587, 179 USPQ 730, 732 (CCPA 1973)".

The Examiner has fallen victim to what the Federal Circuit has characterized as "the insidious effect of a hindsight syndrome wherein that which only the inventor has taught

is used against its teacher.” W.L. Gore & Associates, Inc. v. Garlock, Inc., 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983). The Examiner relied on the paper clips of Brown ('393) and White ('950) which are intended to hold sheets of paper together to modify the shopping cart of Faraj ('624) in which bags are hung on hooks without identifying motivation or incentive in the prior art.

(11)

CONCLUSION

It is evident that the Examiner's rejections violate 35 U.S.C. 103 and M.P.E.P § 2141 and should be reversed. The weight of the evidence shows that the Examiner improperly determined the level of ordinary skill in the art and applied "impermissible hindsight" rather than the requirements of 35 U.S.C. 103 and M.P.E.P § 2141.

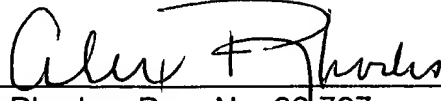
Although an Examiner is a person skilled in the art of examining patents, obviousness rejections under 35 U.S.C. 103 must be based on what is obvious to a "person having ordinary skill in the art" rather than what is obvious to an Examiner after having the benefit of an Applicants' disclosure. In Interconnect Planning Corporation v. Feil, et al., 774 F.2d 1132, 227 USPQ 543 (Fed. Cir. 1985), the Federal Circuit said:

"The invention must be viewed not with the blueprint drawn by the inventor, but in the state of the art that existed at the time."

The Federal Circuit has held that complexity is not an indicia of non-obviousness. In In re Horn et al., 203 USPQ 909 (CCPA 1979), a decision which involved a simple invention, the Court said, "simplicity and hindsight are not proper criteria for resolving the obviousness issue". The Examiner failed to appreciate that Faraj ('624), the most relevant reference, taught away from Applicants' invention rather than providing an incentive for practicing the invention.

In view of the foregoing, it is requested that the Board affirm the correctness of Applicants' position and lift the Examiner's 35 U.S.C. 103(a) rejections of the claims.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Alex Rhodes", is written over a horizontal line.

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(12)

CLAIMS ON APPEAL

5. In combination with a cart, a carrier mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, and a means for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, and a handle attached to at least one of said jaws.

6. The combination set forth in claim 5 wherein said cart is a 2-wheel cart.

7. The combination set forth in claim 5 wherein said cart has a lower shelf for supporting said bag or sack,

8. The combination set forth in claim 7 wherein said shelf is selectively foldable from a vertical stored position to a horizontal load supporting position.

9. The combination set forth in claim 7 wherein said shelf is outwardly adjustable.

10. The combination set forth in claim 5 wherein said carrier is detachable from said 2-wheel cart.

12. The combination set forth in claim 5 wherein said cart has a height which is adjustable.

13. The combination set forth in claim 5 wherein said means for clamping said carrier to said bag or sack comprises a pair of bolts, each having one end portion pivotally attached to an end portion of one of said jaws and a thumb nut for engaging an opposite end portion of another of said jaws.

14. In combination, a 2-wheel cart, said cart having a tubular frame which is vertically adjustable, and a pivotable lower shelf portion attached to said frame which is selectably foldable from a vertical stored non-load supporting position to a horizontal load supporting position, and a carrier detachably mounted on an upper portion of said cart for transporting a closed bag or sack, said carrier having a pair of elongated jaws, each of said jaws having a gripping surface for clamping said jaws to and releasing said jaws from an upper portion of said closed bag or sack, a means for said clamping and releasing said jaws from said upper portion of said closed bag or sack, and a handle attached to said carrier.

20. The combination set forth in claim 5 wherein at least one of said jaws has a gripping surface for retaining and supporting said upper portion of said closed bag or sack.

21. The combination set forth in claim 5 wherein said gripping surface of said jaw

is comprised of a plurality of small outward extending portions for retaining and supporting said closed bag or sack.

22. The combination set forth in claim 5 further comprising a thin metal strip attached to at least one of said jaws, said metal strip having a plurality of outward extending tabs for forming a gripping surface to retain and support said closed bag or sack; a means for clamping said jaws to and releasing said jaws from said upper portion of said closed bag or sack; and a handle attached to said carrier.

23. The combination as set forth in claim 22 wherein said outward extending tabs are triangular.

24. In combination, a cart having at least one pair of wheels for transporting said cart and a carrier mounted on said cart for supporting an upper portion of a closed bag or a sack on said cart, said carrier having a pair of jaws for clamping said upper portion of said closed bag or sack to said carrier; and a means for said clamping and said releasing of said jaws from said upper portion of said closed bag or sack.

25. The combination set forth in claim 24 wherein said carrier is detachably mounted on said cart.

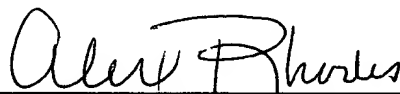
26. The combination set forth in claim 24 wherein at least each of said jaws has

a plurality of outward extending tabs for gripping said upper portion of said closed bag or sack.

27. The combination set forth in claim 24 further comprising a handle attached to said carrier.

28. In combination, a cart having at least one pair of wheels for transporting said cart and a closed bag or sack supporting carrier mounted on said cart for supporting an upper portion of a large closed bag or a sack containing quantities of loose and granular products, such as sand and trash on said cart, said closed bag or sack supporting carrier being releasable from said cart and having a pair of jaws for clamping and releasing said upper portion of said closed bag or sack from said carrier to carry .

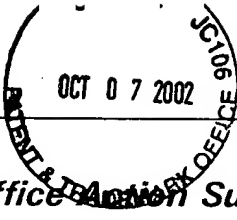
Respectfully submitted,



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Dated: October 1, 2002

Office Action Summary



Application No. 09/207,634	Applicant(s) Berke et al.	
Examiner Bridget Avery	Group Art Unit 3618	

☒ Responsive to communication(s) filed on Mar 29, 2001

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 5-14 and 20-28 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 11 is/are allowed.

☒ Claim(s) 5-10, 12-14, and 20-28 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

Art Unit: 3611

DETAILED ACTION

1. In response to applicant's request for reconsideration and the submission of the English translation of the Mascio (Italy 574172) reference, the finality of the previous office action has been withdrawn. An action on the merits of claims 5-14 and 20-28 follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 5-8, 10, 20, 21 and 24-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj (US Patent 5,697,624) in view of White (US Patent 5,621,950).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag

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or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

4. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and White disclose the features described above.

Faraj and White fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include an adjustable shelf with telescoping tubes to support items of various sizes.

5. Claim 12 is are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) and further in view of Smith (US Patent 4,044,784).

Faraj and White disclose the features described above.

Faraj and White fail to disclose a cart having an adjustable height.

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Smith discloses an adjustable height walking aid cane.

Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

6. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30).

White discloses a detachable carrier having a pair of elongated jaws (12, 14), a means (16) for clamping the jaws (12, 14) to and releasing the jaws (12, 14) from an upper portion of a bag or sack, a handle (32), having a closed loop (36), attached to at least one of the jaws (14), and, a gripping surface (20, 24) including a plurality of small triangular, outward extending portions (38) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of White, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

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Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of varying heights.

7. Claims 5-8, 10, 13 and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) in view of Brown (US Patent 5,301,393).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack. With respect to claim 22, it is noted that Brown's clip is constructed of all metal (see column 1, lines 66) therefore the metal strip claimed by applicant is shown as an integral feature with the jaws of Brown. With respect to claim 23, see column 5, lines 51-54. Note, the bosses and holes, taught by Brown, are functionally equivalent to the applicant's claimed bolt and thumb nut. The

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selection of any of these known equivalents to attach elements would be within the level of ordinary skill in the art.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

8. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Arias et al. (US Patent 4,261,447).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose an adjustable shelf.

Asias et al. discloses a suitcase cart having a base legs (40) with telescoping tubes (54).

Based on the teachings of Asias et al., it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include an adjustable shelf with telescoping tubes to support items of various sizes.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and Brown ('393) and further in view of Smith (US Patent 4,044,784).

Faraj and Brown disclose the features described above.

Faraj and Brown fail to disclose a cart having an adjustable height.

Smith discloses an adjustable height walking aid cane.

Art Unit: 3611

Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and Brown to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

10. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Faraj ('624) and White ('950) in view of Smith (US Patent 4,044,784).

Faraj discloses a cart for transporting grocery bags and cartons. The cart including a support member (12), a handle (24), a plurality of hooks (26) for receiving a handle, and a storable lower shelf/platform (30). With respect to claims 6 and 24-28 and applicant's claim of two wheels, see column 2, lines 31-33.

Brown discloses a detachable carrier having a pair of elongated jaws (20, 18), a means (24, 26) for clamping the jaws (20, 18) to and releasing the jaws (20, 18) from an upper portion of a bag or sack, an integral handle portion (12), having a closed loop (14), attached to at least one of the jaws (18), outwardly extending bosses (28), which bosses (28) are received or accommodated in through holes (30), and, a gripping surface (18) including a plurality of small outward extending portions (40) for retaining and supporting a closed bag or sack.

Smith discloses an adjustable height walking aid cane.

Based on the teachings of Brown, it would have been obvious to one having ordinary skill in the art, at the time the invention was made to combine the bag carrier with the cart of Faraj to facilitate ease in transporting bags without handles.

Art Unit: 3611

Based on the teachings of Smith, it would have been obvious to one of ordinary skill in the art to modify the combination of Faraj and White to include a support body where the height is adjustable using telescoping tubes to accommodate users of various heights.

Allowable Subject Matter

11. Claim 11 is allowed.

Response to Arguments

12. Applicant's arguments with respect to claims 5-14 and 20-28 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Comeaux shows a garbage bag support and storage device.

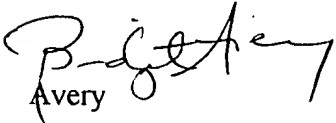
Tseng shows a paper holder.

Art Unit: 3611


14. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

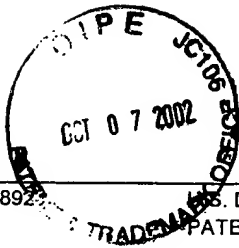
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

15. Any inquiry concerning this communication should be directed to Bridget Avery at telephone number (703) 308-2086.

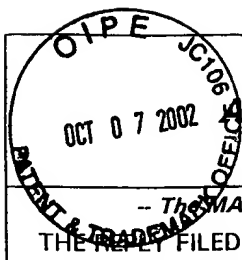

Avery

April 12, 2001


ANNE MARIE BOEHLER
Primary Examiner




FORM PTO-892		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/207,634	GROUP ART UNIT 3618	ATTACHMENT TO PAPER NO.	9
NOTICE OF REFERENCES CITED				APPLICANT(S) Berke et al.			
U.S. PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	A	5,697,624	12/1997	Faraj	280	47.19	
	B	5,621,950	4/1997	White	24	67.5	
	C	5,533,236	7/1996	Tseng	24	67.5	
	D	5,301,393	4/1994	Brown	24	67.7	
	E	4,261,447	4/1981	Arias et al.	190	18A	
	F	4,044,784	8/1977	Smith	135	67	
	G	3,888,442	6/1975	Comeaux	248	98	
	H						
	I						
	J						
	K						
FOREIGN PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB-CLASS
	L						
	M						
	N						
	O						
	P						
	Q						
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)							
	R						
	S						
	T						
	U						
EXAMINER Bridget Avery			DATE April 12, 2001				
Form892ccs2106b							
* A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05(a).)							



Advisory Action

Application No. 09/207,634	Applicant(s) Berke et al.
Examiner Bridget Avery	Art Unit 3618



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED Jul 19, 2001 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid the abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

THE PERIOD FOR REPLY [check only a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ In view of the early submission of the proposed reply (within two months as set forth in MPEP § 706.07 (f)), the period for reply expires on the mailing date of this Advisory Action, OR continues to run from the mailing date of the final rejection, whichever is later. In no event, however, will the statutory period for the reply expire later than SIX MONTHS from the mailing date of the final rejection.

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will be entered upon the timely submission of a Notice of Appeal and Appeal Brief with requisite fees.
3. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search. (See NOTE below);
 - (b) ☐ they raise the issue of new matter. (See NOTE below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE:

4. ☐ Applicant's reply has overcome the following rejection(s): _____
5. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claim(s).
6. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because:
The 103 rejections of claims 5-10, 12-14 and 20-28 is deemed proper. The references relied upon for rejection, when combined, reasonably disclose the features claimed by applicant in the rejected claims.
7. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
8. ☒ For purposes of Appeal, the status of the claim(s) is as follows (see attached written explanation, if any):
Claim(s) allowed: _____
Claim(s) objected to: 11
Claim(s) rejected: 5-10, 12-14, and 20-28
9. ☐ The proposed drawing correction filed on _____ a) ☐ has b) ☐ has not been approved by the Examiner.
10. ☐ Note the attached Information/Disclosure Statement(s) (PTO-1449) Paper No(s). _____
11. ☐ Other: Bridget Avery
BRIDGET AVERY
PATENT EXAMINER 7/25/01



REPUBBLICA ITALIANA

Ministero
dell'Industria e del Commercio

UFFICIO CENTRALE DEI BREVETTI
per Invenzioni, Modelli e Marchi

BREVETTO PER INVE
INDUSTRIALE 57

Classe

Luigi Mascio a Roma

Data di deposito: 6 maggio 1957

Data di concessione: 13 marzo 1958

Carrello porta borsa per la spesa

Il carrello porta borsa per la spesa oggetto del presente trovato, in canna metallica, è composto dalle seguenti parti:

- 5 Telaio fisso, a forma di J rovesciato con ruote alle due estremità inferiori e guide tubolari all'esterno dei due gomiti superiori (fig. 3).
- 10 Ripiano trapezoidale, in canna metallica saldata sulla faccia anteriore del detto telaio (lettera c figura 2).
- 15 Telaio scorrevole, anch'esso in canna metallica ed a forma di U rovesciato con analoghe guide tubolari saldate all'interno delle due estremità inferiori (figura 1).
- 20 I due telai, composti in un tutto unico, formano un carrello la cui parte superiore ed esterna può assumere per scorrimento, le due posizioni di «corto» (fig. 4) ed «allungato» (fig. 4 parte tratteggiata).

RIVENDICAZIONI

- 25 1. - Carrello porta borsa per la spesa, caratterizzato da due telai in canna me-

tallica, dei quali il più piccolo è nuto nello interno del più grand guide tubolari che ne permettono lo scorrimento, offrendo la possib allungare o accorciare il tutto a mento.

2. - Carrello porta borsa per la come alla rivendicazione preceden ratterizzato dal fatto che la borsa è ta di una pattina superiore che r mette il fissaggio al telaio nella posteriore, e fa da chiusura nella anteriore.

Il presente trovato nel suo com. è formato da un carrello costituit due telai in canna metallica che po assumere le posizioni di «corto» e « lungato» (vedi fig. 4) e da una bor tessuto (fig. 5 lettera e) con manigi cuoio superiormente (fig. 5 lettera f borsa è unita al carrello per mezz cinghie di cuoio sia superiormente (fig. 6 lettera g) che sul ripiano trap dale. La borsa, volendo può essere st: ta dal carrello ed adoperata come borsa da viaggio.

Allegato 1 foglio di disegni

STAMPED - NAPOLI - Via Roma, 501 - Telefono 01.751

Prezzo L.

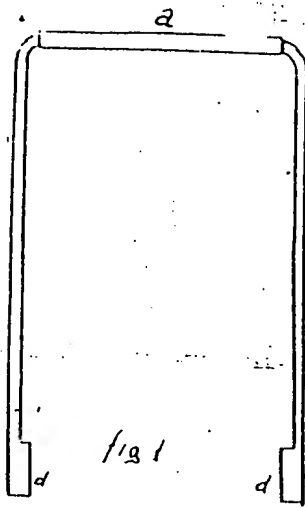


fig 1

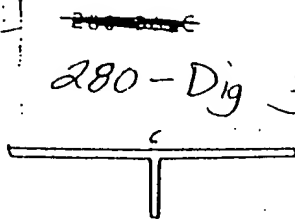


fig 2

16

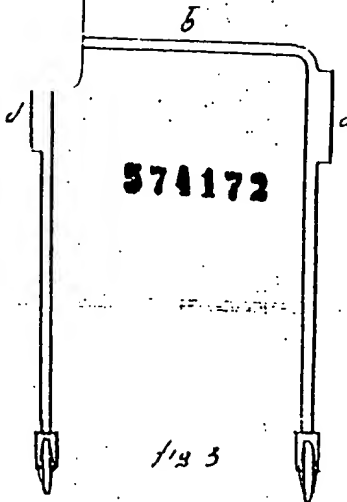


fig 3

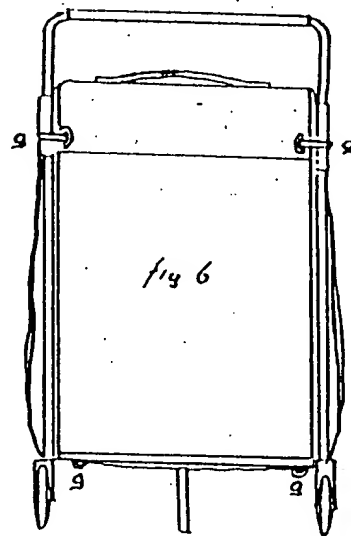


fig 6

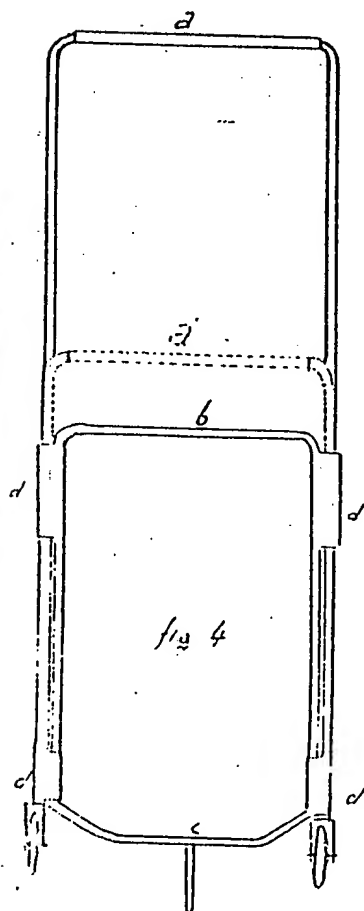


fig 4

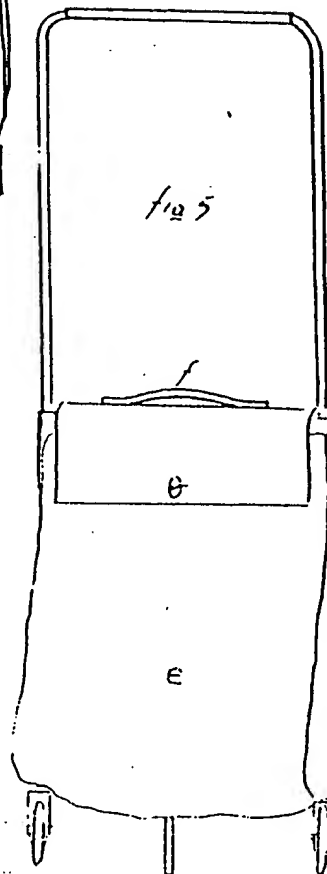


fig 5

ITALIAN REPUBLIC

PATENT NUMBER [illegible]

Ministry of Industry and Commerce
Central Patent Office
for Inventions, Designs & Trademarks

Class

Luigi Mascio, Rome

Filed: May 6, 1957

Granted: March 13, 1958

Shopping cart

The present invention relates to a shopping cart made from metal tubing, comprising the following members:

A stationary frame with an inverted-U shape having wheels at its two lower extremities and tubular guides outside its two upper elbows (Fig. 3).

A trapezoidal shelf made from metal tubing, welded to the front of said frame (Fig. 2, letter c).

A sliding frame, also with an inverted-U shape and made from metal tubing, having similar tubular guides welded to the inside of its two lower extremities (Fig. 1).

Assembled into a single unit, the two frames constitute a cart, the upper and outer member whereof can slide into two positions, a "retracted" position (Fig. 4) and an "extended" position (dotted lines in Fig. 4).

of which is held within the larger by tubular guides allowing it to slide into extended or retracted positions.

2. A shopping cart as claimed in the preceding claim, wherein the bag is provided with a top flap that attaches to the frame at the rear and closes as the front

The present invention as a whole consists of a cart comprising two frames made from metal tubing, which can slide into "retracted" or "extended" positions (see Fig. 4), and a cloth bag (Fig. 5, letter e) with a leather handle on top (Fig. 5, letter f). The bag is attached to the cart by means of leather straps, both at the top (Fig. 6, letter g) and to the trapezoidal shelf. If desired, the bag can be detached from the cart and used as a suitcase.

CLAIMS

1. A shopping cart comprising two frames made from metal tubing, the smaller

1 sheet of accompanying drawings

Price [illegible]

[Address illegible]



AF/3618

Please type a plus sign (+) inside this box → ☐

Approved for use through 10/31/2002. OMB 0651-0031
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TRANSMITTAL FORM <i>(to be used for all correspondence after initial filing)</i>	Application Number	09/207,634
	Filing Date	Dec. (. 1998
	First Named Inventor	Joseph J. Berke
	Group Art Unit	3618
	Examiner Name	Bridget Avery
Total Number of Pages in This Submission	Attorney Docket Number	1374-098

ENCLOSURES (check all that apply)		
<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input checked="" type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		RECEIVED OCT 10 2002 GROUP 3600

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT	
Firm or Individual name	Alex Rhodes, Reg. No. 26,797
Signature	<i>Alex Rhodes</i>
Date	Oct. 2, 2002

CERTIFICATE OF MAILING			
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, Washington, DC 20231 on this date: 10/02/02			
Typed or printed name	Alex Rhodes		
Signature	<i>Alex Rhodes</i>	Date	Oct. 2, 2002

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JOSEPH J. BERKE et al.

Application No. 09/207,634
Appeal No. _____

TRANSMITTAL LETTER

Commissioner for Patents
Washington, D.C. 20231

Sir:

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OCT 10 2002

GROUP 3600

On June 20, 2002, the appellants' Brief was returned to the Examiner with instructions to notify appellants to clarify for the record the proper rejection of claims on appeal by grouping the claims in accordance with 37 CFR § 1.192(c); for clarifying the status of the rejections of claims 9, 12, 14 and 23; and for such further action as may be appropriate.

As yet, I have not been notified by the Examiner as to required changes to appellants' Brief. I am concerned because of the amount of time which has elapsed since the Brief was returned to the Examiner. I am also concerned because the appeal has not been docketed and I do not want the appeal to be abandoned because of a failure by appellants to act.

Enclosed is an Amended Brief (in triplicate) which I believe overcomes the Board's objections. Please enter the enclosed Amended Brief in the record.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Alex Rhodes", written over a horizontal line.

Alex Rhodes, Reg. No. 26,797
Attorney of Record
30100 Telegraph Road, Suite 336
Bingham Farms, MI 48025
Tel: (248) 646-4400
Fax: (248) 644-8849



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PTO/SB/123 (10-00)

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Patent Number	
Issue Date	
Application Number	9/207,634
Filing Date	Dec. 9, 1998
First Named Inventor	Joseph J. Berke

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I am the :

- ☐ Patentee.
- ☐ Assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96).
- ☒ Attorney or agent of record.

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OCT 10 2002

GROUP 3600

Typed or Printed Name	Alex Rhodes, Reg. No. 26,797
Signature	
Date	October 2, 2002

NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below.

☐ Total of _____ forms are submitted.

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